

The House Committee on Judiciary Non-civil offers the following substitute to HB 1172:

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to where offenses are bailable, procedure, schedule of bails, and appeal bonds, so as to require persons who are not lawfully present in the United States and who are charged with a felony offense to have bail set by a superior court judge; to amend Code Section 17-10-1 of the Official Code of Georgia Annotated, relating to fixing of sentence, so as to correct a cross-reference; to provide for other related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to where offenses are bailable, procedure, schedule of bails, and appeal bonds, is amended by revising subsections (a), (b), (c), and (d) to read as follows:

"(a)(1) The following offenses are bailable only before a judge of the superior court:

~~(1)~~(A) Treason;

~~(2)~~(B) Murder;

~~(3)~~(C) Rape;

~~(4)~~(D) Aggravated sodomy;

~~(5)~~(E) Armed robbery;

~~(6)~~(F) Aircraft hijacking and hijacking a motor vehicle;

~~(7)~~(G) Aggravated child molestation;

~~(8)~~(H) Aggravated sexual battery;

~~(9)~~(I) Manufacturing, distributing, delivering, dispensing, administering, or selling any controlled substance classified under Code Section 16-13-25 as Schedule I or under Code Section 16-13-26 as Schedule II;

~~(10)~~(J) Violating Code Section 16-13-31, relating to trafficking in cocaine, methamphetamine, or marijuana;

1 ~~(11)(K)~~ Kidnapping, arson, aggravated assault, or burglary if the person, at the time of
2 the alleged kidnapping, arson, aggravated assault, or burglary, had previously been
3 convicted of, was on probation or parole with respect to, or was on bail for kidnapping,
4 arson, aggravated assault, burglary, or one or more of the offenses listed in ~~paragraphs~~
5 ~~(1) through (10) of this subsection~~ subparagraphs (A) through (J) of this paragraph; and
6 ~~(12)(L)~~ Aggravated stalking.

7 (2) Any person who is not lawfully present in the United States who is charged with any
8 felony violation of the Code shall only appear before a judge of the superior court for the
9 purpose of having bail set.

10 (b)(1) All offenses not included in paragraph (1) of subsection (a) of this Code section
11 are bailable by a court of inquiry and any person not included in paragraph (2) of
12 subsection (a) of this Code section may have bail set by a court of inquiry. Except as
13 provided in subsection (g) of this Code section, at no time, either before a court of
14 inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal
15 is pending, shall any person charged with a misdemeanor be refused bail.

16 (2) Except as otherwise provided in this chapter:

17 (A) A person charged with violating Code Section 40-6-391 whose alcohol
18 concentration at the time of arrest, as determined by any method authorized by law,
19 violates that provided in paragraph (5) of subsection (a) of Code Section 40-6-391 may
20 be detained for a period of time up to six hours after booking and prior to being released
21 on bail or on recognizance; and

22 (B) When an arrest is made by a law enforcement officer without a warrant upon an
23 act of family violence pursuant to Code Section 17-4-20, the person charged with the
24 offense shall not be eligible for bail prior to the arresting officer or some other law
25 enforcement officer taking the arrested person before a judicial officer pursuant to Code
26 Section 17-4-21.

27 (3)(A) Notwithstanding any other provision of law, a judge of a court of inquiry may,
28 as a condition of bail or other pretrial release of a person who is charged with violating
29 Code Section 16-5-90 or 16-5-91, prohibit the defendant from entering or remaining
30 present at the victim's school, place of employment, or other specified places at times
31 when the victim is present or intentionally following such person.

32 (B) If the evidence shows that the defendant has previously violated the conditions of
33 pretrial release or probation or parole which arose out of a violation of Code Section
34 16-5-90 or 16-5-91, the judge of a court of inquiry may impose such restrictions on the
35 defendant which may be necessary to deter further stalking of the victim, including but
36 not limited to denying bail or pretrial release.

(c)(1) In the event a person is detained in a facility other than a municipal jail for an offense which is bailable only before a judge of the superior court, or if the person is detained because he or she is not lawfully present in the United States and is charged with a felony offense and is allowed to have bail set only before a judge of the superior court, as provided in subsection (a) of this Code section, and a hearing is held pursuant to Code Section 17-4-26 or 17-4-62, the presiding judicial officer shall notify the superior court in writing within 48 hours that the arrested person is being held without bail. If the detained person has not already petitioned for bail as provided in subsection (d) of this Code section, the superior court shall notify the ~~district~~ prosecuting attorney and shall set a date for a hearing on the issue of bail within 30 days after receipt of such notice.

(2) In the event a person is detained in a municipal jail for a period of 30 days for an offense which is bailable only before a judge of the superior court, or if the person is detained because he or she is not lawfully present in the United States and is charged with a felony offense and is allowed to have bail set only before a judge of the superior court, as provided in subsection (a) of this Code section ~~for a period of 30 days~~, the municipal court shall notify the superior court in writing within 48 hours that the arrested person has been held for such time without bail. If the detained person has not already petitioned for bail as provided in subsection (d) of this Code section, the superior court shall notify the ~~district~~ prosecuting attorney and set a date for a hearing on the issue of bail within 30 days after receipt of such notice.

(3) Notice sent to the superior court pursuant to paragraph (1) or (2) of this subsection shall include any incident reports and criminal history reports relevant to the detention of such person.

(d) A person charged with any offense which is bailable only before a judge of the superior court or a person who is detained because he or she is not lawfully present in the United States and is charged with a felony offense and is allowed to have bail set only before a judge of the superior court, as provided in subsection (a) of this Code section, may petition the superior court requesting that such person be released on bail. The court shall notify the ~~district~~ prosecuting attorney and set a date for a hearing within ten days after receipt of such petition."

SECTION 2.

Code Section 17-10-1 of the Official Code of Georgia Annotated, relating to fixing of sentence, is amended by revising subparagraph (a)(3)(B) as follows:

"(B) A parolee or probationer charged with a misdemeanor involving physical injury or an attempt to commit physical injury or terroristic threats or with a new felony shall not be entitled to bond pending a hearing on the revocation of his or her parole or

1 probation, except by order of a judge of the superior, state, or magistrate court wherein
2 the alleged new offense occurred after a hearing and upon determination of the
3 superior, state, or magistrate court that the parolee or probationer does not constitute
4 a threat to the community; provided, however, that this subparagraph ~~does~~ shall not
5 authorize state or magistrate court judges to grant bail for a person who is not lawfully
6 present in the United States and is charged with a felony offense or who is charged with
7 any offense ~~listed~~ as provided in subsection (a) of Code Section 17-6-1."

8 **SECTION 3.**

9 All laws and parts of laws in conflict with this Act are repealed.